In the High Court of Judicature at Madras

Dated: 11.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.14961 of 2001

O.P.Dubey ..Petitioner

..vs..

1. The Union of India,
   through the Secretary,
   Ministry of Home Affairs,
   Government of India,
   Central Secretariat,
   New Delhi-1.

2. The Commandant,
   Central Industrial Security Force,
   Unit N.L.C. T.S.II,
   Neyveli.

3. The Deputy Inspector General,
   Office of the Deputy Inspector General,
   Central Industrial Security Force (SZ),
   Ministry of Home Affairs,
   Rajaji Bhavan, 'D' Block,
   Besant Nagar,
   Chennai-600 090. ..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the Deputy Inspector General, CISF, South Zone, the 3rd respondent herein in respect of the Order dated 25.06.1997 passed in his proceedings No.V-11014/26/97-A6(SZ)/4720, confirming the order dated 31.3.97 passed by the Commandant in his proceedings C-15014/Maj-24/C.I.S.F/N.L.C/OPD/PA/754 holding the petitioner guilty of the charges and removing him from service and quash the same and direct the respondents to reinstate the petitioner.

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For Petitioner : Mr.K.S.Gnanasambandam
For Respondents : Mr.Sathiyanarayanan,
ACGSC.,

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the orders of the respondents dated 31.03.1997 and 25.06.1997 removing the petitioner from service, the petitioner has filed the above writ petition to quash the same and direct the respondents to reinstate him.

2. The petitioner Constable O.P.Dubey of Central Industrial Security Force Unit, (for short "CISF"), N.L.C., Neyveli, was issued the following Charge Memorandum under Rule 34 of CISF Rules, 1969.

> "No.904493043 Constable O.P.Dubey of 'E'Coy, CISF Unit, NLC, Neyveli was on 'B' shift duty at Thandavakuppam Gate from 1300 hrs to 2100 hrs on 10.11.96. While he was on duty there he had beaten Insp/Exe Albin Kumar (Coy Commander 'E' copy) with short lathi at about 2055 hrs on 10.11.96 when the later reached the duty post by Motor Cycle No.TN 31 V-5671. He had also bitten on the left hand of the Inspector while the Inspector was trying to stop the bearing by sitting on the Motor Cycle. The above act amount to gross indiscipline, criminal misconduct and insubordination. Hence the charge".

3. On receipt of the above Charge Memorandum, the petitioner submitted a written reply on 03.02.1997, in which he denied the same. Since the reply submitted by the petitioner was found unsatisfactory, an enquiry was conducted. It is seen from the materials placed, the petitioner was provided full opportunity to defend himself and participate in the enquiry. However, after his enquiry on 04.03.1997, he did not attend the enquiry and he pleaded for change of the Enquiry officer. When his request was not acceptable, the Enquiry Officer conducted the enquiry and submitted a report, holding the charge proved against him. Though copy of the enquiry report was furnished to the petitioner on 15.03.1997, he did not submit any representation. The disciplinary authority, on examining the statements and relevant documents of the enquiry proceedings, accepted the finding of the Enquiry Officer and awarded a punishment of removal from service. The said order was confirmed by the Appellate Authority in the order dated 25.06.1997, hence, the present writ petition.

4. Learned counsel for the petitioner mainly contended that inasmuch as the petitioner, who was a Constable, was provoked by his Officer Albin Kumar, which resulted in altercation between them and due to which, he

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exceeded his limit; for which, according to the learned counsel, the punishment, namely, dismissal from service, is excessive and not warranted. In view of the contention only relating to the quantum of punishment, we are of the view that it is unnecessary to refer all the factual details including the enquiry proceedings.

5. In order to appreciate the claim of the petitioner, it is useful to refer reply to the charge sheet, which is available at page Nos.11 and 12 of the typed set filed by the respondents. Among the information furnished, the details stated in clauses (f), (g) and (h) are relevant, which are as follows:

> "(f) Regarding the above I hereby request that on 02.11.96, I received a registered letter from my home as my mother is seriously ill and wants to see her and applied for leave which was refused by Insp/E Albin Kumar. I was taking meals in the mess by worrying about this. At that time Dy.Commandant visited the mess to check the food. At the same time, I explained my story to him and requested for leave, for which he assured me to grant leave and also encouraged me as my mother will be soonly well.
>
> (g) On 10.11.96 when I was performing 'B' shift duty at about 1800 hrs in the evening, I heard a telephone ring from my duty. I lifted the phone. Insp/E Albin Kumar was on the phone and he asked me as nobody is there in the Coy.Office and I replied as nobody is there and only myself is there. He spoken OK and kept the phone. Again at 2000 hrs.the telephone came and I lifted the phone and asked the name of making the call. But he not only refused to disclose his name also abused in low Hindi tone changing his voice and kept the phone.
>
> (h) Again after half an hour i.e., at about 2030 hrs, Insp/E Alvin Sahib came on his motor cycle at TK gate and directly entered the NLC factory. At about 2045 hrs, he came back at my duty post and parked his motor cycle. I paid my compliments to him by saluting. But he did not response to my salute and directly came to me and expressed in anger that "you understand yourself to be a don and reported to the Dy.Commandant against me. Now, I shall do your insult and you report to the Commandant and nobody can do anything to me. But I will not spare you". Saying this, he pulled down the chain of pant and actively taken myself in his clutches from the back side. Suddenly, upon such happening, I was surprised and requested the Insp to leave him and also tried to free from the grip of Insp. But could not succeed. In between Insp was trying to break open his chain and buttons of the plant he saw two civilians standing outside gate who were standing there to see all the happening with me. On watching them, he shouted loudly in order to save my honour. At the same time, Insp observed them and left to pull my pant and started to give blows upon my back and

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head and thrown me on the ground. Afterwards he ridded his motor cycle abusing me and gone out of the gate. Afterwards I reported the matter to the shift I/c over phone as such type of misbehave and assault is done by the Insp and he just gone out. After that I tried my best to connect phone to Asst.Commandant, but I could not get due to busy line. I connected to Dy.Commandant and informed to him. After that I reported in the unit line by shift bus and informed to the shit I/c about the incident. My head was seriously wounded and blood was flowing through my right hand due to stone hit. This was also shown to shift In-charge. After that the vehicle was called to go to hospital. The shift in-charge sent a vehicle to see condition where driver was Vikram Singh. The vehicle was sent back from SF gate by shift In-charge and I was not given vehicle to go to hospital. On asking for vehicle he told that the Asst.Commandant denied to give vehicle to you, what I can do. Due to pain, I gone to bed for sleeping. I don't know when I get up early in the morning. I was suffering from fever. I, anyhow reached in the hospital with the help of one CISF person. The Doctor compelled me to get admitted in the Hospital, even the department objected to admit".

6. The analysis of the above statement makes it clear that the petitioner had no intention or any plan to abuse or cause injury to the Officer, viz., Albin Kumar. It is also relevant to note that among the witnesses, the statement of Constable S.M.Patil alone is relevant, who is said to have witnessed the occurrence. If we analyse the specific assertion of the petitioner in the reply referred to above and the statement of S.M.Patil, it leads to a conclusion that the petitioner Constable had no intention to beat Albin Kumar, but due to provocation and altercation, we are of the view, he exceeded his limit. Though we are not subscribing that the conduct of the petitioner is an appreciable one, considering the materials placed, which we have already referred to, we are of the view that the punishment of dismissal from service is, undoubtedly, disproportionate to the proven charge. There is no discussion or reference to the previous conduct of the Constable concerned.

7. In the absence of those materials and of the fact that due to provocation the petitioner exceeded his limit, we are of the view that the capital punishment of dismissal from service is not appropriate and warranted. On this ground, while confirming the order of the disciplinary authority, we set aside the punishment imposed on the petitioner. For this limited purpose, we remit the matter to the disciplinary authority, with a direction to consider and pass appropriate punishment, other than dismissal from service. The said recourse to be completed within a period of three months from the date of receipt of a copy of this Order.

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To this extent, the writ petition is allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government,
   Union of India,
   Ministry of Home Affairs,
   Government of India,
   Central Secretariat,
   New Delhi-1.

2. The Commandant,
   Central Industrial Security Force,
   Unit N.L.C. T.S.II,
   Neyveli.

3. The Deputy Inspector General,
   Office of the Deputy Inspector General,
   Central Industrial Security Force (SZ),
   Ministry of Home Affairs,
   Rajaji Bhavan, 'D' Block,
   Besant Nagar, Chennai-600 090.

1 cc To Mr.S.Sathyanarayan, Advocate, SR.61945.
1 cc To Mr.K.S.Gnanasambandan, Advocate, SR.61302.

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MR(CO)
RVL 21.12.2006

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